



Written by [Joe Wolverton, II, J.D.](#) on March 9, 2016

## Wyoming to Reform Civil Asset Forfeiture

Wyoming has enacted a law reforming the state's civil asset forfeiture law. While police would still be empowered to use the tactic, under the new scheme, a judge must approve the act within 30 days of the seizure.

Last year, state lawmakers passed a bill aimed at curtailing the abuse by law enforcement of civil asset forfeiture, but state governor Matt Mead vetoed the measure, claiming that "abuse of the process was not a serious problem in Wyoming."



This time around, however, Mead signed the bill into law. "It's an improvement, and again we're very thankful for your work," Mead told state senator Leland Christensen, chairman of the Wyoming Senate Joint Judiciary Committee, which sponsored the bill.

For those readers unfamiliar with this tyrannical transfer of wealth, a constitutional violation known euphemistically as "asset forfeiture," here's the *Washington Post's* summary included in another article published in the *Post* from 2015: "Since 2008, thousands of local and state police agencies have made more than 55,000 seizures of cash and property worth \$3 billion under a civil asset forfeiture program at the Justice Department called Equitable Sharing."

With this kind of money up for grabs, it is little wonder that the plague of asset forfeiture has spread across the 50 states.

Paul-Martin Foss, president and executive director of the Carl Menger Center for the Study of Money and Banking, an Arlington, Virginia-based think tank dedicated to educating the American people on the importance of sound money and sound banking, wrote:

Hardly a week goes by without a mention of some innocent person who is arrested and/or imprisoned for violating an unconstitutional law, an arcane regulation, or simply being in the wrong place at the wrong time. For completely innocuous conduct, they find themselves at the mercy of an uncaring, unfeeling bureaucratic apparatus that chews them up and spits them out.

As with so many of the other ongoing assaults on the vestigial liberty enjoyed by Americans, civil asset forfeiture is justified by its perpetrators as a means of keeping the people safe.

Civil asset forfeiture procedures are based on the premise that a person's property can be complicit in the commission of a crime. This is laughable and legally unreasonable. The Constitution was specifically written to protect citizens from this and all other forms of unreasonable searches and seizures (Fourth Amendment), as well as to place due process protections between the governors and the governed (Fifth Amendment).

Although, admittedly, requiring judges to review property seizures carried out by police under the civil asset forfeiture law is not a touchdown, it certainly moves the ball in the right direction as such acts are



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rarely subjected to judicial oversight.

Truth in Media reports on the progress in Wyoming:

“If an officer of the law wants to seize some assets, he has to contact the attorney general,” Wyoming State Rep. Kendell Kroeker told TheDCNF. “The attorney general determines if there is probable cause. If the AG determines there is probable cause, the officer may proceed with the seizure (this is the same standard as arresting someone).”

From there, the case must go before a judge within 30 days. Under the bill, people are still not provided an attorney if they can’t afford one, since it is in civil court.

“The judge holds a hearing to review the probable cause standard,” Kroeker told TheDCNF. “If the judge determines there was not probable cause, the assets are returned immediately. If the judge determines there was probable cause, a trial is scheduled. This step is a lot like a grand jury — a grand jury does not determine guilt, rather it determines if there is enough evidence to bring charges and go to trial.”

Perhaps the most praiseworthy provision of the recently enacted statute is that which places the burden of proof on the state to provide clear and convincing evidence that the property seized by law enforcement was used in criminal activity.

According to a report in the Casper (Wyoming) *Star Tribune*:

The Wyoming Attorney General’s office would be required under the law to notify people known as third-party owners — such as spouses and banks that hold the title on a vehicle — of the seizure. If judges believe the forfeiture is grossly disproportionate to the offense, they can stop the forfeiture or reduce the amount being taken.

If the property owner is ultimately found to have suffered a violation of his rights in the seizure of his property, the Wyoming proposal provides a process whereby the property owner can sue the state for damages and attorneys fees.

“I think this is model legislation,” Governor Mead said after signing the bill.

He added that he considers his state’s efforts to reform civil asset forfeiture laws an example for other states to follow.

When it comes to civil asset forfeiture, the layers of constitutional violations multiply. Americans — who have been denied due process — are subjected to a financially crippling and liberty-depriving process of defending the ownership of their property. Such tyranny is anathema to the rule of law and the protections bequeathed to us by our Founders.

Some conservatives may argue that while it is sometimes misused, the power of civil asset forfeiture should be retained by police in order to punish “drug dealers.” In fact, representatives of law-enforcement agencies in Wyoming criticized the new law, claiming that civil asset forfeiture is “an effective tool to take profits out of the drug trade.”

But there is another constitutional problem in that premise, as well.

In the Constitution, the federal government was granted “few and defined” powers. These powers were listed (enumerated) so as to bind those who would obtain any sort of authority in the manifold offices of the federal government. In *The Federalist*, Alexander Hamilton explained that if the federal government acted outside the scope of its constitutional authority, then those acts were not laws; they were “mere



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usurpations” and they deserved to be treated as such.

Although it is unpopular in some conservative circles to talk about, the so-called “war on drugs” is one example of an area where the federal government has absolutely no constitutional authority to act.

Americans would go a long way toward eliminating the evil of civil asset forfeiture by demanding that their federal representatives repeal the full panoply of federal drug regulations: “laws” that incentivize the “policing for profit” that fuels the forfeiture scheme.



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